

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SIMON ANDREW ODONI,

Petitioner,

v.

**Case No: 8:16-cv-1231-T35AAS
Case No. 8:08-cr-172-T35EAJ**

UNITED STATES OF AMERICA,

Respondent.

ORDER

This matter is before the Court on Petitioner Simon Andrew Odoni's *pro se* Notice of Appeal, which is construed as a motion for a certificate of appealability ("COA").

(Civ. Doc. 85) Also before the Court is Odoni's Application to Proceed in the District Court Without Prepaying Fees or Costs, which is construed as a motion to appeal *in forma pauperis*. (Civ. Doc. 87)


The Court denied both (1) Odoni's Amended Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence and (2) his Request for Leave to File Supplementary Documents in support of that motion. (Civ. Doc. 83) In his request for a COA of the Court's decision, Odoni again contends that he possesses additional materials to support his Section 2255 motion, which he was prevented from filing due to pandemic restrictions in his place of incarceration.

Odoni is not entitled to a COA. A prisoner moving under Section 2255 has no absolute entitlement to appeal a district court's denial of his motion to vacate.

28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a COA. Section 2253(c)(2) permits issuing a COA “only if the applicant has made a substantial showing of the denial of a constitutional right.” To merit a COA, Odoni must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues he seeks to raise. See 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir 2001). Because Odoni fails to show that reasonable jurists would debate either the merits of the claims or the procedural issues, he is entitled to neither a COA nor an appeal *in forma pauperis*.

Odoni’s motion for a COA (Civ. Doc. 85) is **DENIED**. Odoni’s motion for leave to appeal *in forma pauperis* (Civ. Doc. 87) is **DENIED**. Odoni must obtain permission from the appellate court to appeal *in forma pauperis*.

DONE and **ORDERED** in Tampa, Florida, this 10th day of December 2020.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person